

Winter cover or summer cover ?

In fifteen years, the Association Romande des Intermédiaires Financiers (ARIF) has already proceeded on three occasions to examine third-party liability insurance bids for independent asset managers (IAM) in Switzerland. This examination did not make it possible to offer our members a mutualized contract or to recommend an insurance policy. None of the available bids is adapted to the risks of IAMs, nor do they afford a significant level of protection on the financial services market (for service providers and consumers).

If the purpose of insurance is only to protect IAMs against some hazards of their business activity, the policies offered are barely sufficient. Subscribers will be well-advised to read carefully the general terms and conditions, because although their aim appears a priori to be reassuring - of the type "the insurer provides cover when the insured is liable to a third party for reparation of damage resulting from professional misconduct committed in the course of the provision of financial services" - this cover is largely eroded by the exclusions.

It would take too long to list each of them but one can often read, where only third-party liability is concerned: exclusion of cases of wilful misconduct, claims for execution, extra-contractual complaints, disputes about retrocessions or taxes, complaints based on technical failures, non-fulfilment of promised performances, the consequences of an insider trading offence or of money laundering; the same applies to insurance for senior executives; even insurance against the risk of fraud comprises substantial limits, in particular the fact that fraud by a senior executive is generally excluded, as are losses having any connection whatsoever with money laundering.



Raphaël Treuillaud
President of the supervisory
Commission

These exclusions will lead to deficient coverage in many cases encountered in practice. In a legal framework that has become demanding, will it not be deemed wilful misconduct to depart from a client's express instructions or from his management profile? In an organizational space limited by the size of the company, in which administration, management and execution are often performed by the same people, will fraud by one employee not also imply fraud by a senior executive? In a market governed by the duty to inform, will the prospectus not be the quality promised to the consumer? In a world in which the fight against money laundering of

criminal - and soon of fiscal - origin is at the heart of the regulator's concerns, has the possibility of being caught up in a case of money laundering not become a major risk? It is clear that the current offering is far from covering most of the risks faced by IAMs.

Nor does this offering afford better protection for the market, for IAMs' reputation for soundness and for the legitimate expectations of their clients. If the legislator wants to make it compulsory for IAMs to take out third-party liability insurance in accordance with

the declared aims of the future Federal Financial Services Act (FFSA), it must create an adequate legal framework. Cover of the automobile type would be ideal, with a right of direct recourse by the damaged party against the insurer, no possibility of invoking the exceptions in the insured's cover against said damaged party, the obligation for insurers to immediately report insured parties with inadequate cover to the authority, the institution of an additional insurer, etc.

The cost of such insurance would deserve to be calculated. Various limits on the cover, according to the assets under management, franchises, equity capital requirements, etc. will reduce the insurer's risk, and therefore the cost of the insurance. The important point is not that any loss or damage be covered without limits, but that the market should be protected against the risk of total insolvency by an IAM. In parallel, or if no insurer declares that it is willing to cover such a risk, it would be conceivable to have a compensation fund, financed or guaranteed by all IAMs, as the banks do for savings deposits.

The idea deserves further consideration by the professional organizations, the service providers concerned, the insurers and our members of parliament, in connection with the draft law on financial services, unless third-party liability insurance for asset managers is to be turned into a useless but nevertheless expensive gadget.

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IMPRESSUM

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Editor-in-chief: Norberto BIRCHLER (General manager)

Editors: Members of the ARIF Committee

Devised by: Alain SAINT-SULPICE

Address: 8, rue de Rive - 1204 Geneva

Tel. +41.22.310.07.35 **Fax** +41.22.310.07.39




Prochain
Déjeuner-Débat
20 avril 2015
12h⁰⁰-14h⁰⁰
Métropole Genève
Places limitées

Training schedule 2015-2017


2015 - 2016

E	3 September 2015	B	9 am - 5 pm	Geneva	Basic training - MLA
E	24 September 2015	C	2 pm - 5 pm	Geneva	«Cross-border : Western Europe (selected countries)»
F	7 octobre 2015	CoD	13h30 - 17h30	Genève	Formation de base - CODE DE DEONTOLOGIE
F	5 novembre 2015	C	14h. - 17h. 17h30 - 20h.	Genève Genève	«Financement du terrorisme» 17 ^{ème} Assemblée générale ordinaire de l'ARIF
F	1 décembre 2015	B	9h. - 17h.	Genève	Formation de base - LBA
F	20 janvier 2016	C	14h. - 17h.	Lausanne	«Mise en application des modifications LBA»
E	11 February 2016	CoD	1:30 - 5:30pm	Geneva	Basic training - CODE OF DEONTOLOGY
E	17 March 2016	B	9 am - 5 pm	Geneva	Basic training - MLA
I	13 aprile 2016	C	14 alle 17 ore	Lugano	«Implementazione delle modifiche della LRD»
D	14. April 2016	B	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GwG
D	15. April 2016	C	9 Uhr - 12 Uhr	Zürich	«Umsetzung der GwG-Änderungen»
E	19 May 2016	C	2 pm - 5 pm	Geneva	«Implementation of the MLA amendments»
F	22 juin 2016	C	13h30 - 17h30	Lausanne	«Audits LBA et CoD»

2016 - 2017

F	21 septembre 2016	B	9h. - 17h.	Lausanne	Formation de base - LBA
F	6 octobre 2016	CoD	13h30 - 17h30	Genève	Formation de base - CODE DE DEONTOLOGIE
F	24 novembre 2016	C	18h. - 21h.	Genève	Formation continue LBA 
E	7 December 2016	B	9 am - 5 pm	Geneva	Basic training - MLA
F	1 février 2017	C	14h. - 17h.	Lausanne	Formation continue LBA 
D	22. März 2017	B	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GwG
E	6 April 2017	CoD	1:30 - 5:30pm	Geneva	Basic training - CODE OF DEONTOLOGY
E	4 May 2017	C	2 pm - 5 pm	Geneva	MLA continuous training 
F	18 mai 2017	B	9h. - 17h.	Genève	Formation de base - LBA
F	14 juin 2017	C	14h. - 17h.	Genève	Formation continue LBA 
F	21 juin 2017	C	13h30 - 17h30	Genève	«Audits LBA et CoD»

F in French
D in German
E in English
I in Italian

B MLA basic training
C MLA advanced training
CoD CoD basic training
 Theme to be defined

MLA - Art. 8 Organisational measures

Financial intermediaries must take the measures that are required to prevent money laundering and terrorist financing in their field of business. They must in particular ensure that their staff receive adequate training and that checks are carried out.

Legal developments

Implementation of the FATF recommendations (ARIF communication of 04.03.2015)

In its winter session, the Parliament approved the amendments proposed by the Federal Department of Finance (FDF) concerning the federal act on combating money laundering and terrorist financing (AMLA), thus implementing the FATF 2012 recommendations. The uncertainty concerning this aspect of the financial centre's future has thus come to an end. The Federal Assembly has agreed on a compromise. The worst has been avoided for cash payments, but other provisions that are cumbersome for SMEs operating in financial intermediation have gone through. Non-banking financial intermediaries will have to live with this result in the context of their operations.

ARIF is describing to you the following main amendments, some of which are along the lines of its [statement dated 15 June 2013](#) :

1. Beneficial owner (BO)

The financial intermediary must systematically identify the beneficial owners for all legal persons (except for stock exchange-listed companies). Even if a corporate entity is operational, it is therefore no longer allowed to be its own BO under the AMLA.

2. Transparency of legal persons and companies with bearer shares

Purchasers of bearer shares of an unlisted company must announce their identity (several variants are possible), as well as the identity of the beneficial owner if their shareholding attains or exceeds 25% of the share capital or the votes. This also applies to purchasers of registered shares of a SA, of shares in a Sàrl and of entrepreneur shareholder units in SICAVs.

3. Registration of family and ecclesiastical foundations

The obligation to register on the trade and companies register is extended to ecclesiastical foundations and family foundations.

4. Serious tax offences prior to money laundering

Use of forgery (art. 186 LIFD – Federal Act on direct federal taxation) or tax fraud (art. 59 LHID – Federal Act on harmonization of cantonal and municipal indirect taxation) in connection with tax evasion of more than CHF 300,000 per tax period is an "aggravated tax offence" and therefore an offence prior to money laundering.

In the area of indirect taxation, the prior offence is extended beyond cross-border trafficking in goods (customs contraband), to cover also the offences committed on Swiss territory in the area of taxation, in particular VAT and withholding tax.

5. Politically exposed persons (PEP)

This concept is extended to domestic PEP holding senior public offices at the federal level, as well as PEP of international organizations or within international sports federations. For these categories of PEP, the due diligence measures are based on the risks, unlike for foreign PEP, who are automatically classified as higher risk.

6. Requirements concerning cash payments in transactions involving the sale of real estate or transferable securities

The AMLA applies by extension to natural or legal persons (non-financial professions) who/which negotiate properties and receive cash payments of more than CHF 100,000.-, except if the payments are made through a financial intermediary subject to the AMLA.

7. System of reporting suspicions and powers of the MROS (Money Laundering Reporting Office)

The MROS has been awarded new powers to obtain additional information from financial intermediaries and to exchange financial information, subject to certain conditions, with its foreign counterparts. Automatic initial freezing of the funds has been abolished and the orders of the clients concerned by the notification continue to be executed. Within a period of 20 working days from the notification, the MROS informs the financial intermediary whether or not it is forwarding the notified information to the criminal authority with, if it is the case, freezing of the funds for 5 days as from this time.

8. Targeted financial sanctions related to terrorism

Introduction of a formal legal basis for processing the foreign lists, with examination of said lists by the FDF, then forwarding them to FINMA, then to the SROs and the financial intermediaries.

The adaptations contained in the Federal Act of 12 December 2014 make it possible to implement the international standards. After the period allowed for a referendum until 2 April 2015, these new standards will be followed by an adaptation of the ordinances of the FINMA (MLO-FINMA) and of the Federal Gaming Board as well as the Due Diligence Agreement of the banks (CDB 15/16). The amendments of the FINMA ordinance will certainly have repercussions on our Regulations and Directives, which we in turn will also have to update in order to comply with the new legal provisions. Transitional provisions will certainly be applicable.

The Committee is already giving thought to this work in order to implement these new obligations as practically as possible.

Affiliate, or isolated.

ARIF, as safe as it is simple.

ARIF, recognized by FINMA is:

- > the only multidisciplinary self-regulatory body in Romandie
- > professionals who regulate professionals
- > a Code of deontology for a faultless reputation
- > a high level of expertise
- > about 500 members

Become a member on www.arif.ch

GM notice 2015

The 17th Annual General Meeting of ARIF will be held on Thursday 5th of November 2015, from 5:30 pm, at the Warwick Hotel Geneva, following the ARIF's advanced training course on terrorism financing.



Fight against terrorism in Switzerland

The activities of the two groups "Al-Qaida" and "Islamic State" still constitute a threat to the domestic and external security of Switzerland and the community of States. The ban on these two groups therefore has to be maintained beyond 2014. That is why the Parliament adopted the urgent federal law banning the groups "Al-Qaida" and "Islamic State" as well as the other related organizations, with entry into force on 1 January 2015.

The ban concerns not only all the activities of these organizations in Switzerland and abroad, but also all actions intended to provide them with financial, material or personnel-related support, such as dissemination of propaganda, fund-raising or recruitment of new members. From now on, violations of the ban on the Al-Qaida group will also be subject to federal jurisdiction and be sanctioned by prison sentences of up to five years or by fines, unless more severe criminal provisions are applicable.

Licensing and oversight of regulatory auditors

The draft law on bundling of audit firm supervision, which was adopted by Parliament during its summer 2014 session, and the revision of the Financial Market Audit Act (FMAO-FINMA), the Auditor Oversight Ordinance (AOO) and of the FINMA 2013/3 Circular on Auditing, came into force on January 1, 2015.

After the bundling of audit firm supervision under the Federal Audit Oversight Authority (FAOA), this body will have sole responsibility for licensing and overseeing audit firms, as far as both financial audits and regulatory audits are concerned. The Swiss Financial Market Supervisory Authority (FINMA) continues to determine the content and the principles of regulatory audits, while FAOA defines the standards recognized for financial audits.

For ARIF-licensed auditors, the main changes concern the conditions under which a self-regulatory organism is now authorized to grant a licence to audit firms and lead auditors. The latter must in particular have the required technical knowledge, that is, 200 hours of auditing in the area of supervision concerned, and five years' experience of providing auditing services. They must also prove that they have undergone four hours' training per year.

These new regulatory provisions still raise numerous questions about their implementation. A meeting is scheduled in the near future with FINMA in order to clarify these points. We will not fail to inform you in detail about the implementation of these new laws and regulations.

New arrival at the ARIF secretariat

Since the beginning of the year, the ARIF secretariat team has been strengthened by Mr. Jeremy Adabra, whose duties are those of a multi-task secretary and receptionist. Mr. Adabra holds a diploma in business studies. He speaks French, German, Swiss German and English.



Les Rencontres
de l'ARIF

sous forme de **Déjeuner-débat**

“ Activités transfrontières
avec le Royaume-Uni ”

Orateur invité : Michel Pasteur
*Consultant indépendant, ancien Responsable de la
formation compliance chez Pictet & Cie*

20 avril 2015
12h⁰⁰ - 14h⁰⁰
Métropole Genève
Places limitées

Tarif TTC :
chf 54.- (membres) Inscription sur :
chf 76.- (non-membres) www.arif.ch

Les bonnes idées peuvent parfois
vous prendre en déjeunant